



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 113-02
26 February 2002

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 January 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 21 November 1994, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of an L1 burst fracture, rated at 30%, and a left acetabular fracture and a coccygeal injury, rated together at 30%, for a combined rating of 50%. Upon the approval of those findings, you were released from active duty and transferred to the Temporary Disability Retired List. Thereafter, the Department of Veterans Affairs rated the lumbar and coccygeal conditions together at 20%, and the acetabular condition at 10%. Those ratings were increased to 50% and 30%, respectively, on 24 December 1997. Subsequent VA ratings decisions, if any, were not available to the Board. On 16 December 1999, the PEB found that the residuals of the L1 burst fracture remained unfitting, and ratable at 10%, and that the other two conditions were not separately unfitting and did not contribute to the unfitting condition. You were notified of those findings by mail on 29 December 1999. As you did not respond to the notification letter, your acceptance thereof was presumed, and you were discharged with entitlement to disability severance pay.

The Board was not persuaded that you should have been retired by reason of physical disability, vice discharged. In this regard, it noted that the impairment residual to your injuries was minimal at the time of your discharge, and that the physician who conducted your final periodic examination felt that you were fit for return to active duty. The Board was unable to conclude that the lumbar condition was incorrectly rated at 10% disabling, or that the acetabular or coccygeal conditions were unfitting. The fact that the VA rated all three conditions is not probative of error or injustice, because the VA assigns ratings without regard to the issue of fitness for military service. As you know, the Department of the Navy rates only those conditions which render a service member unfit for duty.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director